

TEMPORARY CROSS REFERENCES TO CITATIONS
GENERAL COMMENTS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of NEW RULE I) ON PROPOSED ADOPTION OF
pertaining to the application) NEW RULE
of Best Available Retrofit)
Technology to existing sources) (AIR QUALITY)
affecting visibility in)
mandatory Class I federal)
areas.)

TO: All Interested Persons

1. On _____ at ____:00 ____m. the Board of Environmental Review (Board) will hold a public hearing in Room _____ of the Mercalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated proposed new rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., _____, 200_, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@mt.gov".

3. The proposed new rule provides as follows:

NEW RULE I DEFINITIONS

(1) For purposes of this rule, the following definitions apply: [40 CFR 301]

(a) "Best available retrofit technology, or BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the following:

- (i) the technology available;
- (ii) the costs of compliance;
- (iii) the energy and non-air quality environmental impacts of compliance;
- (iv) any pollution control equipment in use or in existence at the source;
- (v) the remaining useful life of the source; and

(vi) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(b) "BART-eligible source" means an existing stationary facility which emits visibility-impairing pollutants in amounts the department anticipates will cause or contribute to any visibility impairment in any mandatory class I federal area.

(c) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively). [Necessary for definition of "existing stationary facility"]

(d) "Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

Deciview haze index = $10 \ln (b_{\text{ext}}/10 \text{ Mm}^{-1})$.

Where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

(e) [Used in the definition of " BART-eligible source" at 40 CFR 301.] "Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

(i) fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(ii) coal cleaning plants (thermal dryers);

(iii) kraft pulp mills;

(iv) Portland cement plants;

(v) primary zinc smelters;

(vi) iron and steel mill plants;

(vii) primary aluminum ore reduction plants;

(viii) primary copper smelters;

- (ix) municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (x) hydrofluoric, sulfuric, and nitric acid plants;
 - (xi) petroleum refineries;
 - (xii) lime plants;
 - (xiii) phosphate rock processing plants;
 - (xiv) coke oven batteries;
 - (xv) sulfur recovery plants;
 - (xvi) carbon black plants (furnace process);
 - (xvii) primary lead smelters;
 - (xviii) fuel conversion plants;
 - (xix) sintering plants;
 - (xx) secondary metal production facilities;
 - (xxi) chemical process plants;
 - (xxii) fossil-fuel boilers of more than 250 million British thermal units per hour heat input;
 - (xxiii) petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;
 - (xxiv) taconite ore processing facilities;
 - (xxv) glass fiber processing plants; and
 - (xxvi) charcoal production facilities.
- (f) "Mandatory class I federal area" means any area identified in 40 CFR 81.417.
- (g) "Fixed capital costs" means the capital needed to provide all of the depreciable components.
- (h) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (i) "In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has:
- (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
 - (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time. [Necessary for definition of "existing stationary facility"]
- (j) "In operation" means engaged in activity related to the primary design function of the source. [Necessary for definition of "existing stationary facility"]
- (k) "Installation" means an identifiable piece of process equipment.
- (l) "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.
- (m) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and

operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

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(n) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source. Any final decision as to whether reconstruction has occurred shall be made in accordance with 40 CFR §60.15. [Necessary for definition of "existing stationary facility"]

(o) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant [17.8.901 adds "subject to regulation under the FCAA."] [Necessary for definition of "existing stationary facility."]

(p) "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

NEW RULE II INCORPORATION BY REFERENCE

(1) For the purposes of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 51, Section IV of Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule.

NEW RULE III BART REQUIREMENTS

(1) The owner or operator of an existing stationary facility is not subject to the requirements of NEW RULE III for sulfur dioxide (SO₂) or oxides of nitrogen (NO_x) if it has the potential to emit less than 40 tons per year of such pollutant(s), or for PM-10 if it emits less than 15 tons per year of PM-10 from [date] to [date]. [40 CFR 308(e)(1)(ii)(C)]

(2) The owner or operator of a BART-eligible source which has the potential to emit NO_x, SO₂, or PM-10 in amounts that equal or exceed those set forth in (1) shall submit to the department information, within 30 days following the effective date of this rule, necessary to conduct air quality modeling pursuant to 40 CFR Part 51, Appendix Y, relevant to the impact of the BART-eligible source's emissions on visibility in any mandatory class I federal area. [40 CFR 308(e) & Guidelines at Sec. II.A.]

(3) An owner or operator of a BART-eligible source or an agent with authority to represent the owner or operator of a BART-eligible source shall certify in writing that, based on

information and belief formed after reasonable inquiry, the statements and information submitted pursuant to New Rule III(2) are true, accurate, and complete.

(4) A BART-eligible source which the department finds causes or contributes to an increase in visibility impairment in an affected mandatory class I federal area measuring 0.5 deciview or more when compared against the natural background level of visibility is subject to the requirements of NEW RULE III. The department shall notify each BART-eligible source of this finding. 70 FR 39117-39118 & Guidelines Sec. III.A.]

(5) Within 90 days following the the postmarked date of the department's notification pursuant to NEW RULE III(4), the owner or operator of the BART-eligible source shall submit to the department a proposal for BART made pursuant to Section IV of 40 CFR Part 51, Appendix Y. [40 CFR 308(e)(1)(ii) & Guidelines Sec. IV.]

(6) The department shall issue a preliminary notice of BART determination, notify the owner or operator of the BART-eligible source and interested parties, and provide at least 30 days of public comment on the preliminary notice of BART determination.

(7) The department may, on its own action, or at the request of the owner or operator of a BART-eligible source or an interested party, extend by 15 days the period within which public comments may be submitted if the department finds that an extension is necessary to allow the department to make an informed decision.

(a) Any request for an extension, as provided under NEW RULE III(5), by the owner or operator of a BART-eligible source or an interested party must be submitted to the department by the date that written comments on the preliminary notice of BART determination originally were due.

(8) Following the public comment period, the department shall issue a final notice of BART determination and notify the owner or operator of the BART-eligible source and interested parties of such notice.

The owner or operator of a BART-eligible source shall install and begin operating control equipment as set forth in the department's notice of BART determination as expeditiously as practicable, but no later than five years after the department's issuance of such notice. [42 USC 7491(b)(2)(A)]

(10) A person who is jointly or severally adversely affected by the department's notice of BART determination may request a hearing before the board. The request for hearing must be filed within 15 days following the department's final issuance of the notice of BART determination and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative

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Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing held under this rule. [MAPA]

(11) The department's action is not final unless 15 days have elapsed from the date of the department's issuance of the final notice of BART determination and no person requests a hearing before the board. The filing of a request for a hearing postpones the effective date of the department's notice of final BART determination until the conclusion of the hearing and the issuance of a final decision by the board. [Due process / administrative remedies].

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AUTH: 75-2-111, 75-2-203, MCA.
IMP: 75-2-203, MCA.

REASON: Montana is home to many remarkable national parks and wilderness areas and enjoys a reputation as a state with stunning viewsheds valued by residents and visitors alike. However, increasing levels of human-caused air pollution obscure these scenic vistas, diminishing visitor experience and compromising the inherent and economic value of these areas.

Many sources of air pollution constructed between 1962 and 1977 were built without sufficient controls for visibility impairing emissions. In response to a growing concern over the effects of visibility impairing emissions on our nation's scenic areas, Congress declared a national goal for visibility that includes the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas, which impairment results from human-caused air pollution. 42 USC §7491 of the federal Clean Air Act (CAA) requires all states with mandatory Class I federal areas to adopt visibility protection programs that meet the requirements of federal regulations.

As a demonstration of visibility protection, states are required to submit regulations, including specific emission limits on major sources of visibility impairing emissions, to the U.S. Environmental Protection Agency (EPA) for approval as revisions to the State Implementation Plan (SIP). Congress further directed EPA to develop regulations to guide state action. The federal regulations implementing 42 USC §7491 provide guidance for the state to establish goals and emission reduction strategies for improving visibility in all mandatory Class I federal areas, i.e., national parks of 6,000 acres or more and wilderness areas of 5,000 acres or more established on or before August 7, 1977. Montana has twelve mandatory Class I federal areas.

On July 6, 2005, EPA promulgated the Regional Haze Regulations and Guidelines for Best Available Control Technology (BART) Determinations. 70 FR 39104. The federal rules direct states to identify existing sources of visibility impairment and require those sources to apply BART.

The Board is proposing the New Rules to require BART for existing sources of visibility impairing emissions. The proposed rules would require BART-eligible sources to submit information to enable the Department to make accurate assessments of the impact of the BART-eligible source on visibility in Montana's twelve mandatory Class I federal areas. Certain sources with a potential to emit visibility impairing emissions in de minimus amounts would be exempt from the regulatory requirements of the proposed rule.

The Department would conduct a modeling analysis to determine whether a BART-eligible source causes or contributes to visibility impairment in mandatory Class I federal areas. BART-eligible sources that are determined to "cause or contribute" to visibility impairment are required to submit to the Department a proposal for BART. Under the proposed rule, the Department would review the proposal and issue a preliminary determination of BART.

The Department would take public comment on a preliminary notice of BART determination and issue a final notice of BART determination. ~~To ensure the benefits of the BART determination are realized quickly, the new rule would require installation and operation of BART as expeditiously as practicable, but no later than five years after the Department or the Board determines that BART is required. The new rule provides a person adversely affected by the Department's action may request a contested case hearing before the Board.~~

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The Board is also proposing definitions in the new rule. These definitions would conform to definitions in 40 CFR 51.301.

The Board is proposing to reference within the new rule Section IV of the "Guidelines for BART Determinations Under the Regional Haze Rule," which is codified in the federal rules at 40 CFR Part 51, Appendix Y, for determining BART. Section IV describes procedures for identifying the best system of continuous emission reductions taking into account the factors set forth in the definition of BART.

If adopted by the Board, the Department intends to submit the new rule to the Governor requesting incorporation into the Montana SIP.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., _____, 200_. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the Board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this

agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

BOARD OF ENVIRONMENTAL REVIEW

BY:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN

Reviewed by:

David Rusoff, Rule Reviewer

Certified to the Secretary of State _____, 2006.

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